

JACK KOEGEL

IBLA 77-80

Decided May 12, 1977

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 28833.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings! ! Oil and Gas Leases: Noncompetitive Leases! ! Oil and Gas Leases: Rentals

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

2. Applications and Entries: Generally! ! Applications and Entries: Filing! ! Oil and Gas Leases: Applications: Drawings! ! Oil and Gas Leases: Rentals

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the postal service.

APPEARANCES: Frank Adamson, Esq., Blairsville, Georgia, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jack Koegel appeals from a decision dated November 18, 1976, whereby the New Mexico State Office, Bureau of Land Management,

rejected his offer to lease NM 28833, drawn as number one for parcel NM 959 in the August 1976 simultaneous filing procedure, for the reason that the required rental payment was not made within the 15! day period prescribed by regulation 43 CFR 3112.4-1.

The record shows that notice of rental due, dated September 29, 1976, was received at appellant's address of record Monday, October 4, 1976. The notice emphasized that in accordance with 43 CFR 3112.4-1, payment must be received in the BLM office within 15 days from receipt of the notice. Thus, unless the payment was made before the close of business October 19, 1976, the offer of Koegel would be automatically disqualified. The payment was actually received by BLM on October 22, 1976.

Attorney for appellant contends he received the notice on October 4, for Koegel, who was out of the state, and that the notice was forwarded to Koegel by him. Upon actual receipt of the notice Koegel dispatched a check to his attorney, to be forwarded to BLM. The attorney alleges that special delivery mail was employed in the several transmissions involved and that the delay beyond the 15! day period was occasioned solely by the postal service. It is asserted that the check to BLM was posted from Blairsville, Georgia, on October 18, and that appellant had acted with due diligence throughout. We note that the envelope to BLM containing the check bears postage sufficient only for "First Class Mail," not for expedited handling by "Special Delivery."

The contention by appellant that he did not actually receive the rental notice until some time after October 4, 1976, is without merit. This situation is covered by 43 CFR 1810.2(b), which provides:

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, the person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

This regulation is reasonable and necessary to expeditious administration of the Bureau's business. The conduct of government business cannot be compelled to wait the pleasure or convenience of those persons who seek to deal with it. Failure to comply within mandatory

time limits following service compels rejection of the offer. Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246, (D.D.C., March 25, 1975).

[1, 2] The Mineral Leasing Act specifically provides that lands to be leased noncompetitively must be leased to the first qualified person making application therefor. 30 U.S.C. § 226(c) (1970). 43 CFR 3112.4-1 states that "[r]ental must be received * * * within fifteen (15) days from the date of receipt of notice * * *" and failure to make the rental payment on time will result in disqualification of the offeror. Disqualification under the specified circumstances is automatic, and the offeror having the next highest priority is immediately put under consideration for a lease. The rights of a third party are therefore involved because the next drawn offer in acceptable form earns priority as of the date and time of the simultaneous filing, and that offeror is first qualified as a matter of law to receive a lease. See 43 CFR 3112.2-1(a); 43 CFR 3112.4-1; McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Frank de Jong, 26 IBLA 327 (1976); John Paul Pratt, 24 IBLA 110 (1976); Duncan Miller, 17 IBLA 267 (1974). It is mandatory that the rental payment must be in the proper BLM office within the 15! day period. Moreover, the Board's specific rejection of the argument that late payment of the rental should be excused when the delay was caused by the postal service has been given approbation in Federal Court, Nininger v. Morton, supra. See also Edgar C. Bennington (On Reconsideration), 28 IBLA 355 (1977).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Martin Ritvo
Administrative Judge

